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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/688,253	10/16/2003	Oleg Moscov	021628-000700US	4570

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EXAMINER

LEE, YUN HAENG NMN

ART UNIT	PAPER NUMBER
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3766

DATE MAILED: 08/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/688,253	Applicant(s) MOSESOV ET AL.	
	Examiner Yun H. Lee	Art Unit 3766	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 20,24-28 and 31-53 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 28,31-38 and 45-53 is/are allowed.
- 6) ☒ Claim(s) 20,24-27 and 39-44 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 20, 24 and 39-44 are rejected under 35 U.S.C. 102(b) as being anticipated by Abrahamson (US Pat. Appl. Pub. No. 20020103514).

Regarding claim 20, Abrahamson discloses a medical communication system comprising:

an implantable medical device including a wireless receiver and a wireless transmitter (16); and

an external device including an external transmitter and an external receiver (8) configured to communicate wirelessly with the implantable medical device via a plurality of communication channels (paragraph 16 line 6) each having a different frequency within a frequency band;

wherein the external device is configured to communicate wirelessly with the implantable medical device via a preset communication channel (paragraph 25), and wherein the external device is configured to communicate wirelessly with the implantable medical device via an alternate communication channel selected according to an order of priority (paragraph 30 lines 5-7) if the wireless receiver does not detect a suitable signal from the external transmitter using the preset communication channel

wherein the external device is configured to communicate wirelessly with the implantable medical device in a present communication session on a last communication channel used in a last communication session immediately preceding the present communication session. The device of Abrahamson uses a single channel (active channel) to establish a communication link (paragraph 16 lines 5-9) until switching channels becomes necessary (paragraph 16 lines 16-19). Thus, when the present communication session is initiated, it will inherently be on the last communication channel (active channel) used in a last communication session immediately preceding the present communication session.

It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987). The claimed intended use of communicating on a second-to-last communication channel is not sufficient to distinguish the present claim over the prior art.

Regarding claim 24, the claimed intended use of selecting an alternate channel based on a reverse chronological order is not sufficient to distinguish the present claim over the prior art.

Regarding claims 39-41, the limitations have been met by the above discussion.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 25-27 and 32-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Abrahamson (US Pat. Appl. Pub. No. 20020103514) in view of Von Arx et al. (US Pat. Appl. Pub. No. 20030114897).

Regarding claims 25-27, Abrahamson does not disclose that the implantable medical device is configured to:

communicate with the external device at a primary predetermined time arranged in a previous communication with the external device;

communicate with the external device at a secondary predetermined time arranged in the previous communication with the external device if the wireless receiver fails to detect wirelessly a suitable signal from the external transmitter at the primary predetermined time; and

scan for signals from the external transmitter at preset time periods if the wireless receiver fails to detect wirelessly a suitable signal from the external transmitter at the primary predetermined time.

Von Arx et al. clearly teaches of these through duty cycling. Von Arx et al. further teaches that duty cycling may advantageously avoid the inconvenience of premature battery depletion (paragraph 29 lines 14-16). Thus, it would have been obvious to one

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of ordinary skill in the art at the time of invention to configure the device of Abrahamson so that it would function as specified in claims 25-27 such that it may advantageously avoid the inconvenience of premature battery depletion.

Regarding claims 42-44, the limitations are met by the above discussion of claims 25-27.

Allowable Subject Matter

5. Claims 28, 31-38 and 45-53 are allowed.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yun H. Lee whose telephone number is (571) 272-2847. The examiner can normally be reached on M-Th 9-7.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert E. Pezzuto can be reached on (571) 272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Robert Pezzuto
Supervisory Patent Examiner
Art Unit 3766

yhl